

OPINION SUMMARY
MISSOURI COURT OF APPEALS EASTERN DISTRICT

DIVISION TWO

STATE OF MISSOURI,) No. ED102586
)
Respondent,) Appeal from the Circuit Court of
) Montgomery County
vs.)
) Honorable Wesley C. Dalton
KELLI CARIN SMITH,)
)
Appellant.) Filed: December 22, 2015

Kelli Smith (Defendant) appeals her conviction of first-degree involuntary manslaughter. Defendant raises nine points on appeal, claiming that the trial court erred by: denying Defendant's motion to suppress her blood because the seizure was unlawful (I) and the blood was inadmissible under Missouri's implied consent law (II); precluding Defendant from referencing her involuntary intoxication defense during voir dire (III) and opening statement (IV); refusing to submit an involuntary intoxication instruction (V); improperly instructing the jury regarding the results of the blood alcohol test under Missouri Approved Instructions—Criminal (MAI-CR 3d) 310.04 (VI); excluding certain expert testimony (VII); and overruling Defendant's motion for a new trial based on the improper substitution of an alternate juror after deliberations began (VIII) and juror misconduct (IX).

REVERSED AND REMANDED.

Division II Holds: Defendant's sixth point relied on is dispositive: The trial court erred by omitting the third paragraph of MAI-CR 3d 310.04, as required by the MAI, and Defendant thereby suffered prejudice. Consideration of Defendant's remaining points is, thus, unnecessary.

Opinion by: Philip M. Hess, P.J.
Gary M. Gaertner, Jr., J. and Angela T. Quigless, J. concur.

Attorney for Appellant: Jennifer K. Bukowsky
Alexa I. Pearson, Co-counsel

Attorney for Respondents: Gregory L. Barnes

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